

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
STACEY MERCER, *an individual*,

Plaintiff,

CASE NO.: 19-cv-002605

v.

1 ELIZABETHAN NC, LLC, *a North Carolina
Limited liability company*,
DEMANDED

**ANSWER
JURY TRIAL**

Defendant.
-----X

Defendant 1 Elizabethan NC, LLC (Defendant) by its attorney, Kathryn Fagan
hereby answers the Complaint in the above captioned case.

WITH RESPECT TO JURISDICTION AND VENUE

1. The allegations contained in Paragraph 1 of the Complaint contain legal conclusions and/or Plaintiff's characterization of her claims and/or abstract statements, to which a response is not necessary. To the extent that a response is required, Defendant denies the truth of each and every allegation contained in Paragraph 1 and refers all questions of law to the Court.
2. The allegations contained in Paragraph 2 of the Complaint contain legal conclusions and/or Plaintiff's characterization of her claims and/or abstract statements, to which a response is not necessary. To the extent that a response

is required, Defendant denies the truth of each and every allegation contained in Paragraph 2 and refers all questions of law to the Court.

3. Plaintiff's complaint Paragraph 3 contains allegations of legal conclusions to which a response is not necessary. To the extent that a response is required, Defendant denies those allegations and refers all matters of law to the Court.
4. Plaintiff's complaint Paragraph 4 contains allegations of legal conclusions to which a response is not necessary. To the extent that a response is required, Defendant denies those allegations and refers all matters of law to the Court.
5. The allegations contained in Paragraph 5 of the Complaint contain legal conclusions and/or Plaintiff's characterization of her claims and/or abstract statements, to which a response is not necessary. To the extent that a response is required, Defendant denies the truth of each and every allegation contained in Paragraph 5 and refers all questions of law to the Court.
6. Plaintiff's Complaint Paragraph 6 alleges legal conclusions and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.
7. Defendant denies knowledge or information sufficient to form a belief as to the allegations continued in Paragraph 7 of the Complaint.
8. Defendant denies knowledge or information sufficient to form a belief as to the allegations continued in Paragraph 8 of the Complaint.
9. Plaintiff's Complaint Paragraph 9 alleges legal conclusions and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.

10. Plaintiff's Complaint Paragraph 10 alleges legal conclusions and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.
11. Plaintiff's Complaint Paragraph 11 alleges legal conclusions to which no response is required and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.
12. Plaintiff's Complaint Paragraph 12 alleges legal conclusions to which no response is required and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.
13. Plaintiff's Complaint Paragraph 13 alleges legal conclusions and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.
14. Plaintiff's Complaint Paragraph 14 alleges legal conclusions and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.
15. Plaintiff's Complaint Paragraph 15 alleges legal conclusions and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.
16. Plaintiff's Complaint Paragraph 16 alleges legal conclusions to which no response is required and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.

17. Plaintiff's Complaint Paragraph 17 alleges legal conclusions and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.
18. Plaintiff's Complaint Paragraph 18 alleges legal conclusions and Defendant refers all matters of law to the Court. To the extent that a response is required, Defendant denies those allegations.
19. Defendant admits that the website may take reservations online. It denies all other allegations in Plaintiff's Paragraph 19.
20. Defendant denies the truth of each and every allegation of Plaintiff's Complaint Paragraph 20.
21. Defendant denies the truth of each and every allegation of Plaintiff's Complaint Paragraph 21.
22. Defendant denies the truth of each and every allegation of Plaintiff's Complaint Paragraph 22.
23. Defendant denies the truth of each and every allegation of Plaintiff's Complaint Paragraph 23.
24. Defendant denies the truth of each and every allegation of Plaintiff's Complaint Paragraph 24.
25. Plaintiff's Complaint Paragraph 2 makes a statement that does not require an answer.
26. Defendant denies the truth of each and every allegation of Plaintiff's Complaint Paragraph 26.

27. Plaintiff's Complaint Paragraph 27 makes a statement for which no answer is required. To the extent is required, Defendant denies those allegations.
28. Defendant denies the truth of each and every allegation of Plaintiff's Complaint Paragraph 28.
29. Defendant is without sufficient information to either admit or deny the allegations in Plaintiff's Complaint Paragraph 29. To the extent that an answer is required, Defendants the truth of those allegations.
30. The allegations contained in Paragraph 30 of the Complaint contain legal conclusions and/or Plaintiff's characterization of her claims and/or abstract statements, to which a response is not necessary. To the extent that a response is required, Defendant denies the truth of each and every allegation contained in Paragraph 30 and refers all questions of law to the Court.
31. Defendant incorporates Its' answers above in response to Plaintiff's Count II.
32. The allegations contained in Paragraph 32 of the Complaint contain legal conclusions and/or Plaintiff's characterization of her claims and/or abstract statements, to which a response is not necessary. To the extent that a response is required, Defendant denies the truth of each and every allegation contained in Paragraph 32 and refers all questions of law to the Court.
33. Defendant denies the allegations in Plaintiff's Complaint Paragraph 33.
34. Defendant denies the allegations in Plaintiff's Complaint Paragraph 34.
35. Defendant denies the allegations in Plaintiff's Complaint Paragraph 35
36. Defendant incorporates Its' answers above in response to Plaintiff's Count III.

37. The allegations contained in Paragraph 37 of the Complaint contain legal conclusions and/or Plaintiff's characterization of her claims and/or abstract statements, to which a response is not necessary. To the extent that a response is required, Defendant denies the truth of each and every allegation contained in Paragraph 37 and refers all questions of law to the Court.
38. Defendant denies the allegations in Plaintiff's Complaint Paragraph 38.
39. Defendant denies the allegations in Plaintiff's Complaint Paragraph 39.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

40. The Complaint fails to properly state, specify or allege a cause of action on which relief may be granted and should be dismissed in whole or part with prejudice.

SECOND AFFIRMATIVE DEFENSE

41. The instant action has no arguable basis in law or fact, is frivolous and vexatious and should be dismissed, and Defendant should be awarded attorney's fees, costs and interest for the defense of this frivolous action.

THIRD AFFIRMATIVE DEFENSE

42. Plaintiff did not sustain any damages; to the extent that she may have sustained damages, she did nothing to mitigate those damages. A phone could have ameliorated any problem she believed she had.

FOURTH AFFIRMATIVE DEFENSE

43. Plaintiff failed to provide Defendant with prior notice of the alleged violations and to provide opportunity to cure the alleged violations. Plaintiff did not possess a bona fide good faith intent at the subject premises to avail herself of the goods and services provided thereby but instead acted for the sole purpose of instituting this lawsuit and, at the time of this writing, is the named Plaintiff in 67 lawsuits in the Southern District of NY, alone. Some or all of Plaintiff's claims are barred by equitable reasons.

FIFTH AFFIRMATIVE DEFENSE

44. The provisions of the Americans with Disabilities Act and state and city statutes cited by Plaintiff do not provide for monetary relief, either compensatory or punitive.
45. Plaintiff's Complaint is presented in conclusory and vague terms, which prevents Defendant from anticipating all affirmative defenses and claims that may be applicable in the action. Therefore to the extent permitted under the FRCP and applicable case law, Defendant reserves the right to assert additional defenses or claims that may become known during the course of discovery.

WHEREFORE, Defendant prays judgment dismissing the Complaint and deny Plaintiff reimbursement of any costs.

Defendant further prays that this Court grant the costs of court and attorney's fees incurred in defending this spurious action be assessed against the Plaintiff.

Defendant demands a jury trial.

Respectfully Submitted on Behalf of the Defendant this the 20th day of May, 2019.

 /s/ Kathryn P. Fagan

Kathryn P. Fagan.

NC State Bar no. 21858

PO Box 44

Manteo, NC 27954